JD-03-04
Youngstown, OH

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 377, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (HUMILITY OF MARY HEALTH PARTNERS/ST. ELIZABETH HEALTH CENTER)

and

KAREN BLANCHARD, ROSALIE CALABRIA, CAROL KLINGLER, GWENDOLYN BROWN, KIM PRESNAR, JO ANN HALLSKY, CONSTANCE BARNHART, KATHLEEN ROZZO, PAULA DEMARCO, CATHERINE KALENITS, KATHERINE RICHARDS, AND CARLA WILLIAMS, Individuals	Case No. 8-CB-9415-1
DANIELLE CARCELLI, An Individual	Case No. 8-CB-9415-2
ANTONIO VILLANUEVA, An Individual	Case No. 8-CB-9415-3
JOYCE DAVIS, An Individual	Case No. 8-CB-9415-4
LEE STANLEY, An Individual	Case No. 8-CB-9415-5
FRANK KRISTANC, An Individual	Case No. 8-CB-9415-6
JANICE DECKANT, An Individual	Case No. 8-CB-9415-7
RICHARD CUNNING, An Individual	Case No. 8-CB-9415-8
MARY BETH FABIAN, An Individual	Case No. 8-CB-9415-9
JOSIE GREER, An Individual	Case No. 8-CB-9415-10
CAROLE HART, An Individual	Case No. 8-CB-9415-11
TINA STEVENS, An Individual	Case No. 8-CB-9415-12
ERMA STIFFLER, An Individual	Case No. 8-CB-9415-13
HUMILITY OF MARY HEALTH PARTNERS/ ST. ELIZABETH HEALTH CENTER	Case No. 8-CB-9443
SANDRA BYERS, An Individual	Case No. 8-CB-9654

Susan Fernandez & Bert Lewis, Esq., for the General Counsel.
Glenn M. Taubman & William Messenger, Esqs. , for various Charging Parties.
John N. Childs & Colleen C. Curran, Esqs., for the Employer.
Robert S. Moore, Esq., for the Respondent.

DECISION

GEORGE ALEMÁN, Administrative Law Judge. A hearing in this matter was held in Warren, Ohio, on consecutive days from May 19 to May 22, 2003, based on unfair labor practice charges filed by various individuals, and by Humility of Mary Health Partners/St. Elizabeth Health Center (herein the Hospital or the Employer), a non-profit health care facility, and issuance of a consolidated complaint on March 31, 2003 by the Regional Director for Region 8 of the National Labor Relations Board (the Board).[1] The consolidated complaint alleges that Chauffeurs, Teamsters, Warehousemen and Helpers Union, Local No. 377, affiliated with the International Brotherhood of Teamsters, Warehousemen and Helpers of America (herein the Respondent or Union), had violated Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act (the Act). In a timely-filed answer to the complaint, the Respondent denied the complaint allegations.

At the hearing, all parties were afforded a full and fair opportunity to call and examine witnesses, to present oral and written evidence, to argue orally on the record, and to file post-hearing briefs. On the entire record, including my observation of the demeanor of the witnesses, and after fully considering briefs filed by all parties to the proceeding, I make the following

Findings of Fact

I. Jurisdiction

The Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act, and that the Hospital is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.[2]

---

[1] The charge in Case No. 8-CB-9415-1 was filed by attorney Glenn Taubman on behalf of alleged discriminatees Karen Blanchard, Rosalie Calabria, Carole Klinger, Gwendolyn Brown, Kim Presnar, Jo Ann Hallsky, Constance Barnhart, Kathleen Rozzo, Paula DeMarco, Catherine Kalenits, Katherine Richards, and Carla Williams, identified in the consolidated complaint and at the hearing as the "Joint Charging Parties." The remaining charging parties, with the exception of the Hospital, are unrepresented.

Counsel for the General Counsel represented at the hearing that the charges filed by Frank Kristanc (8-CB-9415-6), Janice Deckant (8-CB-9415-7), Richard Cunning (8-CB-9415-8), Carole Hart (8-CB-9415-11), and Tina Stevens (8-CB-9415-12) have been withdrawn with the Regional Director's approval. At the close of her case in chief, Counsel for the General Counsel also represented that Charging Party Lee Stanley (8-CB-9415-5) had declined any further involvement in this matter. Her unopposed motion to withdraw Stanley's name from this proceeding was granted (Tr. 433).

[2] The Hospital, as noted, is a non-profit health care facility with an office and place of business in Youngstown, Ohio. In the course and conduct of its operations, the Hospital's annual gross revenues exceed $250,000. Annually, it receives goods and materials valued in

Continued

II. Alleged Unfair Labor Practices

A. The allegations

The complaint alleges that the Respondent violated Section 8(b)(1)(A) of the Act by refusing to accept employee-members' resignations from the Union; attempting to collect dues from employees when no valid union security clause was in effect; telling employee-members they could not resign from full union membership if they owed back dues; failing since about December 27, 2000, to inform employees of the rights afforded them under *NLRB v. General Motors*, 373 7 U.S. 734 (1963) and *Communications Workers v. Beck*, 487 U.S. 735 (1988);[3] and failing and refusing to recognize certain employees as objecting nonmembers of the Union and continuing to seek full dues and fees from them as a condition of their continued employment with the Hospital. It further alleges that the Respondent violated Section 8(b)(2) by seeking the discharge of employee Sandra Byers for failing to pay Union dues.

B. Factual background

The record reflects that the Respondent, since April 15, 1997, has been the duly certified bargaining representative of the Hospital's maintenance and non-professional employees in separate bargaining units.[4] Early In 1998, the Respondent and the Hospital engaged in contract negotiations. Sometime in May 1998, the parties concluded negotiations on an initial contract containing, inter alia, a union-security clause (See GCX-2).[5] The agreement was ratified by unit

---

excess of $5,000 directly from points outside the State of Ohio.

[3] In *General Motors*, the Court held that an employee's membership obligation under a union-security clause is limited to its "financial core," e.g., paying an amount equivalent to initiation fees and dues. In *Beck*, the Court held that Section 8(a)(3) of the Act does not require financial core members "to support union activities beyond those germane to collective bargaining, contract administration and grievance adjustment," and only authorizes a union to exact those dues "necessary to performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." *Id.* at 762-763. Subsequently, in *California Saw*, 320 NLRB 224 (1995), enfd. sub nom. *International Association of Machinists & Aerospace Workers v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), the Board refined its analysis of union security clauses consistent with the *Beck* holding. Thus, the Board in *California Saw* held that a union seeking to apply a union security clause to unit employees "has an obligation under the duty of fair representation to notify them of their *Beck* rights before they become subject to obligations under the clause," and that a union violates this duty of fair representation when it seeks to enforce a union security clause without providing such notice. *Id*. at 231, 235. The Board went on to hold that when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, it must notify the employee that he has the right under *General Motors* and *Beck* to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections. Such notice, the Board held, is essential because, in its absence, an employee may be misled into believing that the union-security provision requires full union membership or the payment of full dues.

[4] A description of the maintenance and non-professional units is set forth in each bargaining unit is set forth in Counsel for the General Counsel Exhibit 2 or GCX-2.

[5] The union security clause is found in Section II, Art. I of GCX-2. Its validity is not at issue

Continued

employees soon thereafter. The agreement, however, was not executed by the parties until October 22, 1999, more than a year later. (GCX-2).

The Hospital's Human Resources Vice President, Molly Seals, testified that when she arrived on the scene in March 1999, negotiations between the parties were still ongoing, and that she became involved in the negotiations sometime in late May, 1999, and, in fact, was a signatory to the agreement. Regarding the dues checkoff requirement in the contract, Seals testified that dues checkoff became effective on November 1, 1999, and that actual dues deductions began in December 1999. She claims that the deduction of any dues owed could only be made retroactive to November 1, 1999, but not prior to that date. A memo dated October 22, 1999, and appended to the agreement (GCX-2), signed by Union representatives Bob Bernat and Kenneth Norris,[6] corroborates Seals' testimony regarding the retroactive collection of dues.[7]

The record reflects that in May and/or June 1998, soon after the contract was ratified, several of the Charging Parties signed Union membership applications as well as dues checkoff authorization forms. Deduction of dues from their paychecks, however, did not begin until December 1999, after the contract had been executed by the parties. Most of the charging parties who signed dues checkoff authorization forms in May/June 1999 testified that they were told or had reason to believe that they were required to do so.

Charging Party Klinger thus testified that she signed her membership card and dues checkoff authorization form in June, 1998, and did so only after being told by a Union steward that she would lose her job if she did not sign (Tr. 170). Presnar admits signing a dues checkoff authorization form in June 1998, which she obtained from the Hospital's payroll department. She recalls also receiving a Union membership card, but claims she never signed one. (Tr. 193). Presnar explained that she signed a dues checkoff card because she understood from general talk throughout the Hospital that she "had to sign a card." (Tr. 193-194). Calabria signed membership and dues checkoff authorization cards in June 1998, apparently at the same time as Klinger did, because a Union representative, presumably a union steward, approached her and Klinger told them they "had better sign" the cards. Calabria claims she and Klinger did so out of fear of losing their jobs. (Tr. 213). Hallsky signed a membership card and dues checkoff authorization in June 1998, after finding them on her desk, and testified she did so because she, like Presnar, believed from talk around the Hospital that it was required. (Tr. 233). Brown recalls signing only a dues checkoff authorization form in May or June 1998, handed to her by a Union representative. She too signed the form because she believed she was required to do so (Tr. 247-248). Brown denies having signed a membership card for the Union. Rozzo signed a dues checkoff authorization on June 10, 1998, but not a Union membership card. She explained that she signed the dues checkoff card because she was "required" to "at least sign the dues deduction card." (Tr. 259).

Kalenits signed a Union membership card and dues checkoff authorization form on June 8, 1998. Unlike the others, however, she had no recollection of the circumstances surrounding

---

here.

[6] Bernat serves as the Union's secretary-treasurer and business representative; Norris as business agent and recording secretary.

[7] The memo reflects agreement by the parties that the "dues effective date would be November 1, 1999 and that the Union may require members to pay dues retroactive to that date." The memo makes no mention of any collection of dues for any period preceding November 1, 1999.

the signing of the cards. (Tr. 271-272). DeMarco signed a Union membership card on June 16, 1998. Although she recalls also signing a dues checkoff authorization form, she had no recollection of when that occurred. She was not, presumably because of her poor recollection, asked to explain the circumstances surrounding her signing of the dues checkoff card. Richards recalls signing a "green" card sometime in 1998, but was not sure if it was dues checkoff authorization form or a Union membership card. She did, however, recall that she waited until the last minute to sign the card and did so only after being told by the Union steward who worked in Nutrition Services department that she "had to sign the card or else I'd be fired." Richards claims that at the time she was told this and signed her card, there were at least 15 other employees present who were told the same thing about being fired if they did not sign cards. (Tr. 294-295).

Charging Party Davis signed a Union membership card and dues checkoff authorization form sometime in June 1998. She recalls that the membership card and dues checkoff form were given to her by an employee of the Hospital, but could not recall if the person was a Union official at the time. Davis claims that the individual who gave her the cards to sign told her she was required to do so. She recalls refusing to sign the cards at first, and being told that if she wanted to keep her job, she would have to sign. Davis construed the remarks as a form of intimidation rather than a threat, and, consequently, signed the cards one week later. (Tr. 309). Williams signed a Union membership and dues checkoff authorization form in June 1998, and did so only after being approached by a Union steward and told that she would be fired if she did not sign the cards. (Tr. 321-322). Fabian signed Union membership and dues checkoff authorization cards on June 23, 1998 (RX-15). She was not questioned about the circumstances surrounding her signing of the cards.

The Hospital, as noted, began deducting Union dues from employee wages in December 1999, and remitting them to the Union. The amount of monthly Union dues for each employee was set at two times the employee's hourly rate plus $2.00, but was not to exceed $50.00.[8] The Charging Parties testified, without contradiction,[9] that the Union never informed them when, before, or at any time after, they began paying dues in December 1999, of their rights under *General Motors* and *Beck* to remain nonmembers, to object to paying for nonrepresentational activities engaged in by the Union and to pay only those fees associated with its representational activities, to receive information needed to allow them to intelligently decide whether or not to object, or of the internal union procedure they had to follow to file such an objection.[10] The record, however, does not reveal whether the Respondent's failure to comply with its *Beck* notice obligation extended to other unit employees.

In March 2000, according to Bernat, the Respondent began distributing to newly-hired employees, and those transferring into the unit, a membership application and dues deduction

---

[8] The two-dollar assessment, according to Respondent's bookkeeper and office manager, Denise Sculli, went to International and State strike funds.

[9] Charging party Danielle Carcelli was not in the bargaining unit in December 1999. In August 2000, she became part of the unit when she took the position of secretary in the Spiritual Care department, a position she held until August 2001. She testified that deduction of Union dues from her paycheck began almost immediately upon her entering the bargaining unit, e.g. sometime in August or September, 2000, and that at no time prior to or when she began paying dues was she informed of her *General Motors* and *Beck* rights. (Tr. 337).

[10] The Respondent did not dispute, either at the hearing or in its brief, the Charging Parties' claims that it never informed them of their rights either before or when they began paying dues in December 1999.

form which the Respondent contends contains a proper *Beck* notice. (see GCX-29) The application is in a triplicate carbon-copy style format with an upper and lower portion separated by a perforated line. The first page of the form is white and contains, in the upper portion, an application for membership in the Union with blank spaces for the employee's name and signature and other pertinent data. The bottom portion of the first page contains a dues checkoff form again containing spaces for the employee's name, address, social security number, date, and signature. The second page, which is yellow, and the third page, which is pink, of the triplicate form are identical to each other, but different from the first page. Thus, while the bottom portion of the second and third page contains a carbon copy of the dues checkoff form found on the bottom of the first page, the top portion of second and third page, unlike the first page, is labeled "NOTICE" and contains three paragraphs.

The first paragraph describes the benefits of union membership. The second paragraph reads as follows:

> I understand that I am under no legal or contractual obligation to become a member of the Union. Under the current law, I can satisfy any contractual obligation necessary to retain my employment by paying an amount equal to the uniform dues and initiation fee required of members of the Union. I also understand that if I elect not to become a member, I may pay a service fee which is limited to a proportionate share of the expenditures necessary to support the Union's activities as my collective bargaining representative. If I elect not to become a member, the Union will provide additional information concerning the amount of the service fee based on its most recent allocation of its expenditures which are devoted to activities which are germane to its performance of my bargaining representative, upon my request. The law permits service fee payers to challenge the correctness of this calculation. Procedures for filing such challenges will be provided by the Union, upon request.

Paragraph three of the "NOTICE" is merely an acknowledgement that the employee has read and understood the options available to him. The bottom of the form reflects that when signed, the top white copy of the form goes to the Union, the second (yellow) copy to the employer, and the third (pink) copy to the employee.

I do not agree with the Respondent that the membership application and dues deduction form constituted a proper *Beck* notice under *California Saw*. The application, as noted, is in a triplicate format and, on its face, appears similar in kind to other duplicate or triplicate style forms commonly used in retail and other establishments for credit card billings in which the top copy of the form serves as an original and the page(s) below as a duplicate or "carbon" copy of the top page. Here, the top page of the triplicate application form identifies it only as an "Application" for Union membership, and makes no mention of, or otherwise alerts employees to, the fact that the following two pages are different from the top page and contain certain information relating to their *Beck* rights. Unless their attention was specifically directed to the information found on the second and third page, newly-hired nonmember employees given the form to sign could reasonably believe that they were signing a membership application and dues deduction authorization form only, and that the bottom two pages of the form were mere carbon copies of the top white page. More importantly, the employee would unwittingly be acknowledging that they had read and understood the statement of rights concealed on the second and third page of the form as their signature on the top page, like any other carbon copy type form, would carry through to the bottom pages containing the notice. Accordingly, I find that the membership application with the "Notice" hidden on the second and third page did not

serve to adequately apprise newly-hired employees of their *Beck* rights.

Further, as a statement of *Beck* rights, the notice itself is deficient in that it does not, as required by *California Saw*, clearly inform employees seeking nonmember status of their right to object to paying for any nonrepresentational activities the Union may engage in, or of the internal Union procedures they must follow to file such objections. Further, the language in the "Notice" informing employees of their rights as a nonmember is vague and overbroad. Thus, the Notice states that a nonmember "may pay a service fee which is limited to a proportionate share of the expenditures necessary to support the Union's activities as my collective bargaining representative." It is patently clear, however, that the Union's status as the employees' collective bargaining representative is not dependent on whether it engages in activities of a representational and/or nonrepresentational nature. Stated otherwise, the Union remains the employees' collective bargaining representative whether or not it engages in nonrepresentational activities. As noted, however, under *Beck* nonmembers cannot be required to pay for the nonrepresentational activities engaged in by their bargaining representative. Yet, the above-quoted language does not distinguish between the Union's representational and non-representational activities, and, consequently, does not alert nonmembers to their right not to pay for expenses incurred by the Union in connection with its nonrepresentational activities. Rather, said language on its face informs employees that as nonmembers, they would be required to pay a proportionate share of all activities, not just the representational activities, engaged in by the Union in its capacity as their collective bargaining representative. The notice, therefore, is vague, misleading and overly broad.

Not long after the employee dues began to be deducted in December, 1999, a problem arose between the parties when the Union began remitting to the Hospital its checkoff billing statements seeking dues payments for periods prior to the October 22, 1999 contract signing date, a fact not in dispute here.[11] The Respondent explained that it was entitled to collect dues retroactive to May 1999, because while the contract was admittedly executed on October 22, 1999, it had been ratified and made effective as of May 1999. The Respondent further justified its decision to collect dues for the six-month period preceding the execution of the contract by pointing out that it had been representing the bargaining unit long before October 1999.

Seals testified that in August 2001, the payroll department mistakenly deducted the $50. dues from employee wages. The Hospital subsequently notified employees of the error and of its intent to reimburse employees for the full amount taken from their paychecks. To prevent any further mistakes, the Hospital decided to discontinue deducting union dues, and offered employees the choice of foregoing deductions altogether or having their dues deducted and placed into an escrow account. The record reflects that no dues deduction were made between

[11] The April 2000 dues billing records (GCX-4) sent by the Respondent to the Hospital, for example, shows the Union billing various employees, including the Charging Parties, dues and fees at $50. for the month. Seals, however, testified that the actual amount owed by these employees was much less than the $50. sought by the Union, and that, as a consequence, the Hospital's payroll department was forced to recalculate the correct amount. She explained that the process of reviewing and recalculating the actual dues amounts owed by employees was a tedious one, often taking hours and even days to perform. Sculli admitted that when the Union began receiving dues in December 1999 following execution of the contract, it began applying those dues to the six-month period, e.g., beginning May, 1999, preceding the contract's signing. By billing the dues at $50., the Union, according to Sculli, hoped to recover all the dues purportedly owed to it for the six month period preceding execution of the contract and to bring those employees so billed up to date on their dues Tr. 532).

September 2001 and February 2002, but were resumed in March 2002.

Sometime prior to May, 2001, the Hospital and the Union began negotiations for a new contract. In a May 7, 2001, memo from Seals to managers, and shared with unit employees, the latter were advised that the Union intended to conduct a strike. In her memo, Seals addressed certain concerns that had been expressed by employees to the Hospital, including their right to participate or not participate in the strike, and the effect, if any, crossing the picket line would have on their pay or jobs. These and other related concerns were addressed in the memo, and in a "question and answer" document attached thereto. The Hospital also provided employees with a sample copy of a "resignation" letter they could use to effectuate their resignations from the Union. (see RX-4). Seals testified that she also gave employees who came to her with questions about their dues payment obligations information on the subject which the Hospital had obtained from the National Right to Work Foundation's internet website. (Tr. 72). The Union did in fact conduct a 12-day strike beginning May 12, 2001.

With the exception of Charging Party Sandra Byers, whose situation is more fully discussed below, during April and May 2001, the Charging Parties individually notified the Respondent by letter that they were resigning from full membership in the Union. Some of them, namely Mary Beth Fabian, Karen Blanchard, Constance Barnhart, Antonio Villanueva, Erma Stiffler, and Josie Greer simply stated in their letters that they were resigning from the Union effective immediately. Others, such as Carole Klinger, Kim Presnar, Kathleen Rozzo, Rosalie Calabria, Carla Williams, Danielle Carcelli, Jo Ann Hallsky, Gwendolyn Brown, Catherine Kalenits, Katherine Richards, Joyce Davis, and Paula DeMarco, notified Respondent that they were converting from full to financial core status in the Union and would pay only their fair share of the Union's representational fees and dues, thereby inferentially objecting to paying for any nonrepresentational activities engaged in by the Union.[12]

By letter dated June 6, 2001, and sent to the Charging Parties and certain other employees who sought conversion to financial core status, Bernat denied their requests on grounds that each purportedly owed back dues.[13] The letter stated that "in order to have your

[12] Rozzo sent two letters, the first on April 10, the other on May 1 (GCX's 55, 56). She explained that she sent the follow-up May 1, resignation letter because the return receipt for the first April 10, letter showing proof of service was not returned to her; Klinger and Presnar sent theirs on April 19 (GCXs 37, 44); Calabria sent hers on April 30 (GCX-47); Williams and Carcelli sent theirs respectively on May 7 and 8 (GCXs 64, 65); Hallsky and Brown sent theirs on May 9 (GCXs 52, 53); Davis, Kalenits, and Richards sent theirs on May 10 (GCXs 62, 59, 61); and DeMarco sent hers on May 12 (GCX-60). In addition to the above-named charging parties, other employees also tendered change of status or membership resignation letters to the Union during this same period. See, GCXs 9 and 10.

Although, as correctly pointed out by the Respondent, the letters from the charging parties asking to be converted from full to financial core status did not explicitly say they were "resigning" or "quitting the Union," it is clear, from an August 15, 2001 letter Respondent sent them in response to their requests that the Union viewed their requests for a change in status as resignations from Union membership (See GCX-28). In any event, an employee's notification to the union of his or her desire to become a financial core "member" necessarily carries with it the notion that the employee is effectively resigning as a full member and is no longer willing to voluntarily pay dues. *Graphic Communications International Union Local 735-S (Quebecor Printing Hazleton, Inc.)*, 330 NLRB 32, 34 (1999); *Carpenters Local 470 (Tacoma Boatbuilding Co.)*, 277 NLRB 513 (1985).

[13] Other non-charging party employees who received the June 6, 2001, letter included

Continued

status changed to Financial Core, your dues must be paid through the month of May, 2001," and that unless the amount described in the letter sent to each employee was paid in full by the date specified therein, their monthly dues would continue to accrue and their status would not be changed.

The Charging Parties testified that they were unaware when they received Bernat's June 6, letter that they owed back dues. In response to the June 6, letter, Charging Parties Klinger, Presnar, Calabria, Rozzo, and Davis called the Union and requested copies of their dues statement showing how much they purportedly owed. Charging Party Gwendolyn Brown sent Bernat a letter dated June 13, 2001, disagreeing with Bernat's assertion in the letter sent to her that she owed $167.50 in back dues and would have to pay said amount before she could become a financial core member. Brown too requested that Bernat provide an "acceptable answer" as to why she owed the above amount. (GCX-54).

The record reflects that in response to the above employee inquiries, the Union forwarded copies of their dues statement to them. The statements confirmed that the dues employees had been paying since December 1999 were being retroactively applied by the Union to the six-month period preceding the contract's execution, e.g. beginning in May 1999. The Respondent, in fact, continued billing these and other similarly situated employees for full union dues through October 2001, notwithstanding their requests to convert to financial core status.

By letter dated June 26, 2001 and sent to all 900 plus unit employees, Norris, inter alia, notified the unit of the various requests the Union had received from the Charging Parties and other employees asking to be converted to financial core status.[14] In his letter, Norris accused the Hospital of failing to inform said employees prior to the strike that to become a financial core or "fair share" member, their Union dues "must be paid up to date." Norris further noted in his letter that of the approximately 40 unit employees who submitted such letters, "all but two were not in compliance," and that under the Union's bylaws, these individuals had "thirty (30) days to come into compliance or further action will be taken." (GCX-27).

On August 15, 2001, Bernat sent another letter to all recipients of his June 6, 2001 letter, including the Charging Parties herein, stating that the Union would be honoring their resignations effective as of the date of the request (GCX-28). He explained that the June 6, 2001, letter had been intended only as a reminder of their continued obligation to pay dues for the period when they were members, and that their resignations did not negate that obligation. He further explained in his letter that employees had the "right to refrain from becoming an active member of the Union," and could "elect to satisfy the requirements of a contractual union security provision by paying an initiation fee equivalent and monthly fees to the Union." Bernat explained, mistakenly so, that 85% of the Union's funds had been spent on "non-

---

Thomas Sheehan, Bonny Robinson, JoAnna Richardson, Jeff Sidor, Sandra Nechiporichik, Eric Moore, John Prejsanar, Jr., Maryann Raghanti, Linda Kutsko, Kathleen Mattozzi, Jason Markey, Nancy Furrie, Jillian Hughes, Natasha Boyer, and Janice Allen. (See, GCX-11). There were, however, other employees who submitted similar requests for a change in status and who, as stipulated by the Union at the hearing, did not receive the June 6, 2001, Bernat letter (Tr. 97). As to the latter, the record does not make clear if the Union immediately accepted their resignations and converted them to financial core status, or whether, as with the Charging Parties and the other above-named employees, they had their resignation requests denied for similar or other reasons.

[14] The bargaining unit at the time consisted of approximately 904 employees.

representational activities," and that non-members who objected would be charged only for representational activities.[15] He then asked employees to reconsider their decisions to resign, and, with his letter, sent each a membership application and dues deduction form which he urged employees to sign and return to the Union.

Two days later, on August 17, 2001, Bernat sent a letter to all unit employees in which he addressed the Hospital's alleged erroneous August deduction of $50. dues from employees' paychecks. He explained to employees that the Union and the Hospital had been having "complications" since their first contract regarding the dues deductions called for under the dues checkoff provision, and that, since then, the Hospital had been in violation of the contract. Bernat further explained that because of these difficulties with the Hospital – and through no fault of the Union - most of the unit employees owed six months in back dues, which the Union had, for the past two and a half years, asked the Hospital to deduct. Bernat informed employees that the Hospital had, within the prior week, suddenly and without prior notice to the Union or employees, begun to deduct a portion of the past due payments, thereby reducing the amount of back dues still owed to the Union. He further encouraged them to call the Union if they had any questions regarding their dues payments or any past due amounts.

The record reflects that in early September, 2001, Charging Parties Klinger, Rozzo, Richards, Presnar, Calabria, and Williams, in separate letters to the Union, challenged the amount the Union in its August 15, 2001, letter stated they would have to pay as fair share employees, and requested "detailed" financial information substantiating the Union's figures.[16] By letter dated October 1, 2001, the Respondent furnished them with the requisite financial information (see GCX-32).

Despite Bernat's assurance to the Charging Parties in his August 15, letter that their resignations would be honored and made retroactive to the date of their requests, documentary evidence, as well as testimony by Sculli, makes clear that the Respondent continued to treat the Charging Parties as full members, and to collect full membership dues from them, for more than one year. (See GCX's 15-26). Thus, it was not until November 2002, that the Respondent changed its records to reflect the Charging Parties' fair share status, and ceased collecting full dues from them. The record further reflects that despite similar attempts by Carcelli and Hallsky in May 2001, to alter their status, their dues also were not reduced until March 2002, and their change of status was finally acknowledged in the Union's April 2002 billing records. Bernat reluctantly admitted that the Respondent never returned to the Charging Parties the amounts for which they were improperly overcharged as fair share employees.

In April 2002, the Respondent distributed to all active unit members and retirees a newspaper entitled, "*The Teamsters,*" consisting of 20 pages and containing numerous labor-

---

[15] By letter dated August 21, 2001, and sent to all recipients of his August 15, letter, Bernat corrected himself and explained that the Union, in fact, had spent 15% of its funds on non-representational activities, and 85% on its representational activities during its most recent accounting year, and that the dues and fees of objecting non-members would be 85% of regular dues (see GCX-31).

[16] Klinger's and Presnar's letters, dated September 4, 2001, were received into evidence as GCX-43 and 46. Calabria's and Rozzo's letters dated September 5, 2001 were received into evidence as GCX-51 and 58. The Richards and Williams letters were not produced. However, the Respondent stipulated that its October 1, 2001, letter was sent to these six individuals, thus establishing that Richards and Williams sent similar letters disputing the Respondent's claim as to what their fair share amount would be.

related articles, advertisements, and various cartoons. The newspaper did not contain a table of contents identifying the articles therein or the page on which any particular article might be found. On page 16 of the newspaper, mixed in with eight other articles, was an article entitled "Annual Notice of Union Security," which was intended to serve as a *Beck* notice. The Notice, in relevant part, stated as follows:

> "The right, by law, to belong to a Union and to participate in its affairs is a very important right. Currently, you also have the right to refrain from becoming an active member of the Union and you may elect to satisfy the requirements of a contractual Union security provision by paying an initiation fee equivalent and monthly fees to the Union which reflect the representational expenditures of Teamsters Local 377.
>
> Please be advised that 15% of the Union's funds were spent in our most recent accounting year for non-representational activities. Accordingly, non-members who object will be charged only for representational activities and, if a non-member objects in writing the Union will provide detailed information concerning the breakdown between representational and non-representational expenditures."

Several of the Charging Parties testified to having received copies of the Union's newspaper in the past, but could not be sure when they may have received it. None, however, testified to having received or read a copy of the April 2002, edition. The Respondent, for its part, produced no evidence to show that the Charging Parties were on its mailing list as of April 2002 Nor is there evidence to show that similar notices had been printed in prior editions of the newspaper.[17]

Charging Party Byers became a bargaining unit employee on or about September 24, 2000, when she transferred from the Hospital's patient accounting department to its purchasing department. Byers testified that when she interviewed for the purchasing department position, she was told by the department manager Fuller that she would have to sign a form authorizing

---

[17] The above published language, like the triplicate membership application form, did not, in my view, constitute proper notification to employees of their *General Motors* and *Beck* rights. The notice, as stated, is buried on the sixteenth page of the 20-page newspaper among eight other unrelated articles, and there is nothing on the front page of the newspaper, or, as noted, a table of contents, to notify or alert employees that a statement of their rights is contained anywhere therein. Nor was the notice set out in different type (e.g., bold, italics, etc.) or size to emphasize its importance or to distinguish it from other articles on the page or in the rest of the newspaper. In these circumstances, I find that the notice was not reasonably calculated to apprise employees of their *Beck* rights. Nor does the language in the article satisfy the *California Saw* requirement of a proper notice. The article, as noted, advised employees that objecting nonmembers would only be charged for "representational activities," but did not define what those activities consisted of. The notice, in effect, left it to employees to guess at what the Union meant by, or construed to be, a representational activity. As stated by the Board in *California Saw*, employees must be given "sufficient information" so as to enable them to intelligently decide whether or not to object. The broad statement in the April 2002, that nonmembers will be charged only for representational activities, without defining what those activities included, in my view, does not qualify as "sufficient information." See, *Abrams v. Communications Workers of America*, 59 F.3d 1373 (D.C. Cir. 1995), cited with approval in *California Saw*, supra. at 233, where the court found similar language to be overly broad and an "inadequate" *Beck* notice.

the Hospital to deduct Union dues from her salary and that she could obtain the necessary form from the payroll department. She claims that when she inquired at the payroll department, no one there seemed to know what she was talking about. Her testimony in this regard is uncontradicted and found to be credible.

The record reflects that more than a year later, on November 21, 2001, Byers received a certified letter from Bernat congratulating her on her new position and inviting her to become a member of the Union.[18] Included with the letter was the previously discussed membership application and dues deduction form (GCX-29) which Bernat asked Byers to sign and return to him within ten days. The letter advised Byers that she had "the right to refrain from becoming an active member of the Union" and could elect to satisfy the union security requirements of the collective bargaining agreement by paying an initiation fee equivalent and monthly fees to the Union reflecting the latter's representational expenditures, and noted that during its most recent accounting year, 16% of the Union's funds were spent on nonrepresentational activities.[19] The letter stated that objecting nonmembers would be charged only for representational activities and that, "if a non-member objects by sending a certified letter or by personally delivering the letter to the Union's office, the Union will provide detailed information concerning the breakdown between representational and non-representational expenditures." (RX-9). Byers claims that on receipt of the letter, she put it aside and took no action on it. As to the triplicate membership application form, Byers testified she read the top white page fully, and did not bother to look at the second and third pages of the form because she assumed they were identical to the top page. (Tr. 374, 376).

Bernat wrote to Byers again on December 5, 2001, reminding her of the membership application and dues authorization form she had been sent with the November 21, 2001, letter, and stating that she was obligated "to become and remain a member in good standing" of the Union. The letter informed Byers that according to the Union's bylaws, Byers owed monthly dues/fees of $24. which were to be paid by the 10th of each month, as well as an initiation fee or its equivalent of $150. According to the letter, Byers owed the initiation fee and dues/fees for the months of October 2000 through December 2001, totaling $510., and that this was the amount she would have to pay to avoid discharge. He advised Byers that because she had failed to either join the Union or pay her fair share fee, the Union had no choice but to notify her that unless the above amount of $510. was received in the Union's office by December 19,

---

[18] Article II, Section 2 of the parties' agreement requires the Hospital to provide the Union with the name, address, and job classification of new employees within 14 days after the start of their employment. Bernat testified that, for reasons unknown, the information regarding Byers' employment as a unit employee was not furnished by the Hospital to the Union. The Respondent asserts that it sent the November 21, 2001 letter once it learned of Byer's employment.

[19] Documentary evidence of record shows that the most recent yearly audit of the Union's financial records was performed by certified public accountants, Gilbert & Associates, and covered the period ending December 2000. A copy of the accountant's report, apparently intended for use by the Union in connection with objections filed by nonmembers, was sent to Bernat on August 18, 2001. (see, e.g., GCX-32, p. 2). Byers, as noted infra, was sent a copy of this report on January 2, 2002, along with a letter explaining, inter alia, that consistent with the accountant's report, her dues as an objecting service fee payer would total 85% of the Union's regular dues (GCX-71). It would appear, therefore, that the Respondent's statement in its November 21, 2001, letter to Byers, that the Union, during its most recent accounting year, had spent 16% of its funds on nonrepresentational activities, and by implication 84% on representational activities, was inaccurate.

2001, she would lose her job. He again reminded Byers that her monthly dues and fees had to be submitted to the Union by the 10th of each month in order to satisfy her obligation and avoid discharge in the future. (GCX-68). Byers was also instructed to contact her Union representative immediately or to call the Union's office at the number given if she did not understand what was stated in the letter.

Byers testified, without contradiction, that immediately upon receipt of Bernat's December 5, 2001, letter, and as instructed in that letter, she made several efforts to discuss the contents of the letter with a Union representative. Thus, she claims she personally went to the Union's office at the Hospital to discuss its contents but found no one there, and further called the Union's phone number at the Hospital numerous times but received no answer. Byers' testimony regarding her attempts to contact the Union soon after receiving the December 5, letter is, as noted, uncontradicted and found to be credible. On December 16, 2001, Byers notified Norris, by certified mail, that she wanted to become "an objecting service fee payer," and, consequently, would pay "only that portion of the Union dues and fees attributable to representational activities on behalf of the bargaining unit." Byers was unsure where she obtained the form letter used to submit her request to Norris. She made clear in her letter, however, that as an objecting service fee payer, she did not agree to be bound by the Union's Constitution, by-laws, or other rules. She further asked Norris to provide her with the amount she had to pay as a financial core member. (GCX-69).

On December 19, 2001, the last day given to Byers in the December 5, letter for her payment of dues, Bernat sent the Hospital a letter naming Byers and other employees as individuals who had failed to pay Union dues and/or fees as required by the collective bargaining agreement, and demanding their termination. (GCX-70). Although the letter was not addressed to her, Byers nevertheless claims she received a copy of this letter from the Union.

By letter dated January 2, 2002, Bernat notified Byers of his receipt of her December 16, 2001, letter stating she wanted to become an objecting service fee payer, and informed her in the letter that her Union fees amounted to 85% of the regular dues which was two times her hourly monthly wage.[20] Bernat also included with his letter financial information detailing how the calculation was made, and a verification of the information from the outside auditor. Bernat's letter further advised, inter alia, that if Byers did not agree with the Union's calculations, she had the right to challenge the financial information before an impartial decision maker.

On January 11, 2002, Byers faxed Bernat a letter acknowledging receipt of his January 2, 2002, correspondence, and stating that as she earned $10.98 per hour, her union dues should be $21.96 a month (GCX-72). A handwritten notation found on the letter reflects that Byers calculated her fair share monthly dues to be $18.67. Byers also expressed uncertainty as to the proper form that needed to be filled out by her and, consequently, faxed to Bernat, along with the letter, a copy of the membership application and asked Bernat to verify whether or not this was the correct form. (RX-10). Her confusion, she explained, stemmed from the fact that the application form appeared to be for those wishing to become members of the Union. As she did not wish to be an "actual" member of the Union, Byers was not sure if the membership

[20] The record does not make clear when the Union actually received Byer's December 16, 2001, letter. I find it highly unlikely, however, that Byers' letter would have taken some two weeks to arrive at the Union's office. Rather, I find it more likely than not that Byers' certified letter would have reached the Union's office closer to December 19, 2001, the date the Union sent its letter to the Hospital requesting her discharge. As noted, in the November 21, 2001, letter, the Union represented that 84% of its funds were spent on representational activities.

application applied to employees interested only in being fair share members. (Tr. 370). There is no evidence to indicate that the Union responded to the inquiry made by Byers in her January 11, 2002, letter inquiry. Nor for that matter is there any indication that the Union responded to Byers' December 16, 2001, inquiry regarding the specific amount of dues she was expected to pay as a fair share employee.

In fact, the record reflects that the Union's next contact with Byers occurred more than a year later, on February 25, 2003, when Norris wrote to Byers stating that the Union had recently learned she had not paid any "dues or fair share fees" since becoming part of the unit in September 2000, and that it was investigating the reasons for such nonpayment. The letter advised Byers that regardless of the reason, she still owed a fair share fee amounting to $561.92 for the period beginning 31 days after her entry into the unit through February 2003. Norris also pointed out in his letter that the Union did not have a completed dues/fee authorization form on file for Byers and urged her to sign one he had included with the letter and return it to the Union. He further indicated that if she did not wish to sign the dues deduction authorization form, Byers should ensure that her fair share fee of $23.68 was received by the Union by the 10th of each month (RX-12).

On March 1, 2003, Byers signed a dues checkoff authorization form which she returned to the Union by certified mail on March 4, 2003. In a letter accompanying the dues checkoff form, Byers informed Norris of the correspondence she had previously sent the Union indicating her willingness to become an "objecting service payer," and requesting certain information that was never provided to her. Byers also told Norris that while she was agreeing to have her dues automatically deducted from her paycheck, she did not want any deductions taken out of her check for back dues. She also raised questions as to the amount of dues she purportedly owed for the month following her September 25, 2000 entry into the bargaining unit.

Despite submitting a dues checkoff authorization form to the Union on or around March 4, 2003, Byers testified that as of the date of the hearing more than two months later, no dues had yet been deducted from her paycheck. Byers claims that two weeks prior to the start of the hearing, she asked the Hospital's payroll department if her name was on the dues deduction list and was told it was. When Byers asked why her dues were not being deducted, she was told that the payroll office had not yet received the necessary authorization from the Union allowing the Hospital to begin deducting dues (Tr. 370).

C. Analysis

1. The refusal to honor the Charging Parties' resignations/change of status requests

The complaint alleges at paragraph 8, and I agree, that the Respondent's refusal, on or about June 6, 2001, to accept the Charging Parties' resignations and/or requests to convert to financial core status unless they first paid up what they purportedly owed in back dues, was unlawful. Thus, it is well-settled that employees have an absolute right to resign their membership in a union, and that any restrictions placed by a union on its members right to do so, including an unnecessary delay in processing the resignation request, is unlawful. *Pattern Makers League v. NLRB*, 473 U.S. 95 (1985); *Auto Workers Local 73 (McDonnell Douglas)*, 282 NLRB 466 (1986); *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330 (1984); also, *Affiliated Food Stores*, 303 NLRB 40 (1991); *Sheet Metal Workers' International Association, Local No. 16,AFL-CIO (Losli International, Inc.)*; 299 NLRB 972, 976 (1990); *Sheet Metal Workers' International Association, Local No. 18 (Rohde Brothers, Inc.)*, 298 NLRB 50, 51 (1990).

The Respondent does not deny, nor can it plausibly do so given Bernat's June 6, 2001 letter, that it refused to accept the Charging Parties' requests to resign from full membership in the Union. It argues, however, that no violation should be found or remedy imposed because, while it may have "misinformed" the Charging Parties about their resignation rights in its June 6, letter, it corrected its alleged misconduct not long thereafter by notifying the Charging Parties through Bernat's August 15, letter that their resignations from full membership were being accepted and made retroactive to the date of their requests, and because its purported "misinformation" regarding employees' resignation rights affected only a "handful" of the approximately 900 employees in the bargaining unit. I do not agree.

Thus, despite notifying the Charging Parties in its August 15, letter that it was accepting their resignations, the Respondent's own records, as previously discussed, make patently clear that for more than a year thereafter, the Respondent continued to regard the Charging Parties as full Union members and to deduct full Union dues from them. The Respondent's claim, therefore, that its June 6, refusal to accept the Charging Parties' resignations was remedied soon thereafter on August 15, is simply not true.

Nor, in any event, would the Respondent's acceptance of the resignations on August 15, 2001, have exempted it from liability, for, as pointed out, any undue delay in accepting an employee's resignation constitutes unlawful interference with the employee's Section 7 right to resign. Here, the Respondent has offered no explanation or justification for the nine-week delay in accepting said resignations. This nine-week delay, therefore, was both excessive and inexcusable, and thus unlawful. See, *Affiliated Food Stores*, supra at 45 (10-week delay in accepting employee resignations found unlawful).

The Respondent's further claim that its conduct was de minimis in that it affected only "a handful" employees is equally devoid of merit, for there were, in addition to the Charging Parties, numerous other employees, 40 according to Norris' June 26, letter to the entire bargaining unit, who likewise had their resignations denied by the Respondent, clearly more than the "handful" suggested by the Respondent. The finding of a violation, in any event, depends not on the number of employees that may have been affected by the unlawful conduct, but rather on the nature of the conduct itself. Thus, even if the June 6, 2001, letter had been directed at a single employee, the "misinformation" provided therein to that employee concerning his/her resignation rights would constitute a violation of the Act, and require remedial relief. In short, I reject the Respondent's assertion that the finding of a violation or imposition of a remedy is not warranted. Rather, I find that by conditioning, on June 6, 2001, the Charging Parties' resignations and/or change of status requests on their payment of back dues, and by thereafter delaying acceptance of their requests for some nine weeks, the Respondent violated Section 8(b)(1)(A) of the Act.

2. The Respondent's June 26, 2001 letter to unit employees

The complaint further alleges that the Respondent also violated Section 8(b)(1)(A) of the Act by informing all unit employees through its June 26, letter that they could not become fair share members unless their dues were paid up to date. While the Respondent did not expressly tell employees in its June 26, letter that they were prohibited from resigning if they owed back dues, it did so implicitly when it charged the Hospital with failing to notify employees that they could not alter their union membership from full to fair share status unless their dues were paid up to date. By accusing the Hospital of failing to notify employees of this restriction on their right to resign, the Union effectively conveyed to unit employees that it adhered to this position, e.g. that employees who owed back dues were not free to resign at will. Accordingly,

by notifying unit employees in its June 26, letter that they could not resign or alter their status unless their dues were paid up to date, the Respondent unlawfully interfered with their Section 7 right to resign from the Union, and violated Section 8(b)(1)(A) of the Act, as alleged.

3. The failure and/or delay in recognizing the Charging Parties as objecting nonmembers

Counsel for the General Counsel contends, and the Respondent denies, that it unlawfully failed to recognize Charging Parties Klinger, Presnar, Calabria, Carcelli, Brown, Hallsky, Davis, Rozzo, Kelenits, Richards, Williams, and DeMarco as objecting nonmembers.[21] I agree with Counsel for the General Counsel.

As noted, between April and May, 2001, the above Charging Parties informed the Union that they were altering their status to financial core membership, and objecting to paying for any costs associated with the Union's nonrepresentational activities. Although in its August 15, 2001, letter to the Charging Parties, the Respondent assured them it was honoring their requests retroactive to the date made, and would be charging them only for expenses incurred in connection with its representational activities, the Respondent in fact did not keep its word, for, as previously found, the Respondent, for more than a year thereafter, continued to treat the above objecting nonmember Charging Parties as full Union members, and to charge them full fees and dues, which presumably included costs associated with its nonrepresentational activities.

The Respondent has offered no lawful explanation or justification for not immediately acknowledging the above Charging Parties' objector status, and for continuing to collect full dues and fees from them after their objector status had been perfected. The Board has held that a union violates its duty of fair representation by charging employees for nonrepresentational expenses after their status as *Beck* objectors is perfected. *California Saw*, supra, at 248-249; also, *Office Employees Local 29 (Dameron Hospital Assn.)*, 331 NLRB 48, 75 (2000), and *Machinists Lodge 160 (American National Can Co.)*, 329 NLRB 389 (1999). As the Board noted in *American National Can Co.*, supra, once a union "knows that a certain number of employees are fee objectors ... then it has no right to collect moneys from those employees notwithstanding their objections, and rebate the sums" at a subsequent time. Accordingly, I find that the Respondent's failure and/or delay in accepting Charging Parties Klinger, Presnar, Calabria, Carcelli, Brown, Hallsky, Davis, Rozzo, Kelenits, Richards, Williams, and DeMarco as objecting nonmembers, and in continuing to charge them full fees and dues, amounted to a breach of its duty of fair representation and violated Section 8(b)(1)(A) of the Act, as alleged.

4. The collection of dues for periods prior to the contract's October 1999, execution

The complaint alleges, and Counsel for the General Counsel contends, that the Respondent's retroactive collection of dues from employees for the six-month period preceding the October 22, 1999, execution date of the contract was unlawful. The Respondent counters that its actions in this regard were lawful because, while executed on October 22, 1999, the collective bargaining agreement between the parties, by its terms, had been in effect since May 1998. Next, the Respondent argues that even if the union security provision is found not to

[21] The Respondent does not contest the status of these individuals as objecting nonmembers. It argues instead that said Charging Parties were in fact recognized as objecting nonmembers in its August 15, 2001, letter.

have been in effect prior to the contract's October 22, 1999, execution date, it was still lawfully entitled to collect dues for periods prior to October 22, 1999 based on the dues checkoff authorization forms which most of the charging parties signed in May or June 1998. Lastly, the Respondent contends that this allegation is barred by Section 10(b) of the Act,[22] arguing that while it did indeed collect dues for the period prior to October 1999, it ceased collecting for that period well before December 2000, six months before the charges were filed (RB:19). I find merit in the allegation.

Regarding the Respondent's claim that it lawfully collected dues retroactively for the six-month period prior to the contract being executed on October 22, 1999, the Board has long held that a union-security clause may not be applied retroactively, and that the date of a contract's execution, and not its retroactive "effective" date, governs the validity of such a clause, even if the contract expressly provides otherwise. *M. J. Santulli Mail Services, Inc.*, 281 NLRB 1288, 1294 (1986); *Local 32B-32J, SEIU (Star Security Systems)*, 266 NLRB 137, 138 (1983); 266 NLRB 137, 138 (1983); *Peoria Newspaper Guild Local 86 (Peoria Journal Star)*, 248 NLRB 88, 90 (1980); *International Chemical Workers Union, Local No. 112 (American Cyanamid Company)*, 237 NLRB 864 (1978). The Respondent's assertion, therefore, that the effective date of the contract, not its execution date, governs the validity of the union security clause, and that it was, consequently, justified in collecting dues for periods preceding the contract's execution date, is without merit.

The Respondent, as noted, further contends that, even if the dues checkoff and union security provisions of the parties' agreement were not enforceable prior to the contract's execution on October 22, 1999, it was still entitled to collect back dues for periods preceding the contract's execution by virtue of the dues checkoff authorizations which it contends the Charging Parties voluntarily signed in May/June 1998, authorizing said deductions. I disagree, for as previously discussed, most of the charging parties who testified in this proceeding to having signed dues checkoff authorizations in May or June 1998, stated, credibly and without contradiction, that they did so either because they were told by Union representatives that they could lose their jobs or be fired if they did not sign the authorizations, or because they believed from talk going around the Hospital that they were required to do so.[23] It is therefore patently clear, and I so find, that the dues checkoff authorizations signed by the Charging Parties herein in May and June 1998, was, contrary to the Respondent's assertion, anything but voluntary. The Respondent did not call any of the stewards or other Union representative who took part in the distribution of the dues checkoff authorizations to explain what, if anything, they may have told employees regarding the signing of said authorizations. It is well-settled that dues checkoff authorizations must be made voluntarily. *Hospital Del Maestro*, 323 NLRB 93, 94 (1997); *International Longshoreman's Association, Local 1575, AFL-CIO (Puerto Rico Marine Management, Inc.)*, 322 NLRB 727, 729 (1996). As pointed out by the Board in *Puerto Rico Marine Management*, "a union may not compel union members to execute dues-checkoff authorizations as a condition of their employment and a union may not threaten to cause their discharges or cause them to be discharged for failing to execute dues-checkoff authorizations." As the dues checkoff authorizations signed by the Charging Parties in May and June 1998, were coercively obtained, they were unenforceable. Accordingly, the Respondent, contrary to its above assertion, could not lawfully collect the retroactive dues from the Charging Parties on

[22] Section 10(b) states, in relevant part, that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board…."

[23] As noted, Charging Parties Kalenits, DeMarco, and Fabian either had no recollection of what they may have been told, or were never asked to describe the events surrounding their signing of their checkoff authorizations.

the basis of their dues checkoff authorizations.

As to its Section 10(b) defense, the Respondent contends that, for the most part, the Charging Parties dues arrearages were all paid up by April or May 2000, and that the Charging Parties' failure to file a charge within 6 months of the date their last past due payment was made renders their allegation time-barred under Section 10(b). I disagree. Section 10(b) provides, in pertinent part, that no complaint shall issue based upon an unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made. The 6-month "limitations" period, however, does not begin to run on an unfair labor practice until the person adversely affected has clear and unequivocal notice of the alleged offending act. The burden of showing that a charging party had such notice rests with the party asserting the 10(b) defense. *Allied Production Workers Union Local 12 (Northern Engraving Corp.)*, 331 NLRB 1, 2 (2000); *Barnard Engineering Company*, 295 NLRB 226 (1989); *Desks, Inc.*, 295 NLRB 1, 11 (1989).

Here, the Charging Parties credibly testified that they first learned of their alleged dues arrearages when Bernat, in his June 6, 2001, letter, denied their requests to become financial core members purportedly because they owed back dues. The Respondent produced no evidence to contradict their claims in this regard. The charge in Case 8-CB-9415, alleging that the Respondent had unlawfully collected retroactive dues from the Charging Parties, was filed on June 27, 2001, just three weeks after the Charging Parties first learned of such arrearages, well within the six-month limitations period and therefore timely. Accordingly, I find that the Respondent's collection of dues from the Charging Parties for periods prior to the contract's October 22, 1999, execution date was unlawful and a violation of Section 8(b)(1)(A) of the Act.

5. The failure to notify employees of their *Beck* rights

The consolidated complaint alleges, at paragraph 11, that since about December 27, 2000, the Respondent has not complied with its obligation under *California Saw* and *Weyerhauser* to notify bargaining unit employees of their *General Motors* and *Beck* rights. As noted, when or before requiring unit employees to pay dues and fees under a union security clause, a union must notify employees of their right under *General Motors* and *Beck* to remain a nonmember of the union, to object to paying for nonrepresentational activities and to obtain a reduction in their dues and fees if they so object, to receive sufficient information to enable them to intelligently decide whether or not to object, and to be informed of the internal union procedures they must follow in filing any such objections. The burden of proving that the Respondent, since December 27, 2000, has not complied with its above obligation rests with the Counsel for the General Counsel. *AFTRA, Portland Local (KGW Radio)*, 327 NLRB 474, 475 (1999); *Teamsters Local 738 (E.J. Brach Corp.)*, 324 NLRB 1193 (1997). Counsel for the Counsel for the General Counsel has met that burden in this case.

Thus, the credited testimony of the various Charging Parties establishes that the Respondent never informed them of their *Beck* rights when they first became obligated to pay dues to the Union. With the exception of Carcelli, who first began paying dues in August 2000, all the Charging Parties began paying dues in December 1999. The Respondent's failure to properly inform unit employees of their *Beck* rights, however, was not limited to the Charging Parties. Thus, beginning in March 2000, all newly-hired employees or employees transferring into the unit, according to the Respondent, received GCX-29, the membership application and dues deduction triplicate form, which the Respondent insists contains a proper *Beck* notice. I have, as noted, rejected the Respondent's claim for, as previously discussed and found, the membership application was deficient as a *Beck* notice in that the so-called *Beck* notice is not apparent from the face of the form but is, instead, concealed on the subsequent pages. Further,

the notice itself is inadequate in that it does not provide employees with sufficient information regarding their right to object to paying for the Union's nonrepresentational activities, nor does it advise them of the procedures they had to follow to file any such objections. Having found that the membership application form did not constitute a proper *Beck* notice, it follows that employees hired or who transferred into the bargaining unit since March 2000, and who were given the application form to sign, were never properly apprised of their *Beck* rights. The Respondent's further assertion that all unit employees were subsequently properly notified of their *Beck* rights by virtue of the notice published in its April 2002, newspaper, "*The Teamsters,*" is, for the reasons previously discussed regarding the deficiencies in that notice, without merit.[24]

The Respondent contends that even if it did fail to give unit employees proper notice of their *Beck* rights, the allegation should nevertheless be dismissed as untimely under Section 10(b) because, according to the evidence adduced by Counsel for the General Counsel, its alleged unlawful conduct occurred, according to Charging Parties' testimony, as far back as December 1999, more than six months before the first charge was filed on June 27, 2001. The contention is without merit, for a union's obligation to notify employees of their *Beck* rights at the time or before they are required to begin paying dues under a union security clause is, in my view, a continuing one that is satisfied only when the union complies with said obligation. Thus, while the Respondent's unlawful conduct in this regard began long before the December 27, 2000, allegation date, its conduct was of an ongoing and continuing nature. Accordingly, the allegation that the Respondent has, since December 27, 2000, failed to notify unit employees, including the Charging Parties, of their *General Motors* and *Beck* rights is not untimely even if the Respondent's conduct began outside the 10(b) period, for it is well-settled that Section 10(b)'s 6-month limitation period is tolled where, as here, the unlawful conduct is of a continuing nature. *U.S. Abatement, Inc.*, 303 NLRB 451, 459 (1991).

The Respondent further contends on brief (p. 24-25) that even if the allegation is found not to be time-barred, no violation need be found or remedy imposed with respect to the Charging Parties because the latter subsequently learned of their *Beck* rights in May 2001, through information provided to them by the Hospital and from other independent sources, such as the National Right to Work Foundation's internet website, and indeed exercised their rights by asking the Union to change their status to fair share status, which requests, the Respondent insists, were accepted and honored shortly thereafter. In these circumstances, and citing in support the Board's holding in *AFTRA, Portland Local (KGW Radio)*, supra, the Respondent argues that "[i]t makes no sense to find [the Union] guilty of not providing notice of rights the Charging Parties in fact exercised." (RB:27). I disagree.

First, the Board's decision in *KGW Radio* is factually distinguishable from the instant case. That decision involved, inter alia, an allegation that a respondent union violated Section 8(b)(1)(A) by not notifying a charging party of his *Beck* rights before it was legally obligated to do so. The Board declined to find a violation. In so doing, the Board reiterated its holdings in *California Saw* and *Weyerhauser* that "a union breaches its duty of fair representation if it fails to inform unit employees of their *Beck* rights at the time it first seeks to obligate them to pay fees and dues under a union-security clause." (underscoring added). It then pointed out that the

---

[24] The Respondent could not avoid liability for failing to notify unit employees of their *Beck* rights even if the notice in the April 2002, could be construed as a proper *Beck* notice since said notice was published more than a year after the December 27, 2000, allegation date. A union's obligation to inform employees of their *Beck* rights, as noted, attaches when or before employees first become obligated to pay union dues under a union security clause which, as alleged here, occurred since about December 27, 2000.

charging party was already aware of, and indeed had exercised, his *Beck* rights before the union was legally obligated to notify him of said rights, and the union had, from the time it received his request to become a financial core member, acknowledged and treated him as an objecting nonmember. The Board in *KGW Radio* reasoned that, in these circumstances, "it would elevate form over substance to find that the union was thereafter obligated to notify the charging party of the procedures associated with how to exercise his right to object."

Unlike in *KGW Radio*, there is no evidence here to show, and the Respondent does not contend otherwise, that the Charging Parties were ever made aware, or were informed, of their *General Motors* and *Beck* rights prior to or at the time they were first required to begin paying Union dues in December 1999. Rather, the Respondent's claim here is that the Charging Parties learned of their *Beck* rights in May 2001, some 17 months after December 1999, when it first became legally obligated to provide them with such notice. Unlike in *KGW Radio*, therefore, where the charging party became aware of and exercised his *Beck* rights before the union involved was required to provide him with such notice, here the Respondent's obligation under *California Saw* and *Weyerhauser* to notify the Charging Parties of their *Beck* rights attached in December 1999, more than a year before the latter presumably first became aware of their *Beck* rights from other sources.

Nor do I agree with the Respondent that because the Charging Parties may have subsequently learned of their *Beck* rights through other sources, and thereafter exercised said rights, in May 2001, and because their requests may purportedly have been honored soon thereafter, it should not, under *KGW Radio*, be held liable for, or be required to remedy, its own failure, since December 27, 2000, to comply with its own *Beck* notice obligations. The *KGW Radio* decision, as noted, dealt with, among other things, whether a union should be held liable under Section 8(b)(1)(A) for not notifying a charging party of his Beck rights before it was legally obligated to do so. The Board in *KGW Radio* was not confronted with, and consequently did not address, the question posed here by the Respondent of whether a union that does not comply with its statutory obligation of notifying employees of the *Beck* rights may nevertheless be exempted from liability if employees subsequently gain knowledge of their *Beck* rights through other means. *KGW Radio*, therefore, does not support the Respondent's rather novel proposition that remedial relief from its unlawful failure, since December 27, 2000, to notify the Charging Parties of their *Beck* rights, is unwarranted because the Charging Parties may have been fortunate enough or sufficiently resourceful to have acquired knowledge of their *Beck* rights through other means five months after it was legally obligated to furnish them with such information.

Nor would the Respondent prevail even if the *KGW Radio* decision could somehow be read as supporting its above proposition. Thus, unlike the union in *KGW Radio* which, as noted, immediately and properly honored the charging party's request to become an objecting nonmember, the Respondent here, on receipt of the Charging Parties' various requests to resign from full membership and to convert to fair share status, immediately refused to accept their requests and unlawfully conditioned its acceptance of their requests on the Charging Parties' payment of any back dues purportedly still owed by them. While it subsequently changed its mind and notified the Charging Parties, more than two months after denying their requests, that said requests would be honored and made retroactive to the date submitted, the Respondent, as noted, continued treating the Charging Parties as full members and deducting full dues from them for more than a year. The Respondent's conduct herein, therefore, is in no way comparable to that of the union in *KGW Radio*, nor are the facts in the latter case analogous to those present here.

In sum, I reject as without merit the Respondent's contention that this particular

allegation is time-barred under Section 10(b), as well as its further claim that no violation should be found or remedy imposed from its failure, since December 27, 2000, to provide the Charging Parties, and presumably any other unit employee with notice of their *General Motors* and *Beck* rights because said employees may have subsequently learned of their rights through other sources. Rather, as held by the Board in *California Saw* and *Weyerhauser*, a union's failure to notify employees of their *General Motors* and *Beck* rights when (or before) subjecting them to dues obligations under a union security clause is unlawful and a violation of Section 8(b)(1)(A) of the Act. See, *Service Employees Local 74 (Parkside Lodge of Connecticut)*, 323 NLRB 289 (1997). Accordingly, as alleged in the complaint, the Respondent's failure, since December 27, 2000, to provide unit employees, including the Charging Parties, herein with proper notice of their *General Motors* and Beck rights violated Section 8(b)(1)(A).

6. The allegations involving Sandra Byers

The complaint alleges that the Respondent violated Section 8(b)(1)(A) of the Act by soliciting, in its November 21, 2001, letter, Byers' membership in the Union, and by threatening her with discharge in its December 5, 2001, letter, without first having notified her of her *General Motors* and *Beck* rights, and Section 8(b)(2) by thereafter seeking her discharge for failing to pay dues. The Respondent denies the allegations, and insists that Byers was properly notified of her *Beck* rights in the November 21, 2001, letter it sent her, and in the membership application form (GCX-29) that accompanied the letter, and that none of the other subsequent letters that were sent to her contained any restriction whatsoever. I find merit in the allegations.

First, the November 21, 2001, letter did not constitute a proper notice to Byers of her *General Motors* and *Beck* rights as it unduly restricted the method by which Byers, as a nonmember, could submit her objections to paying for nonrepresentational activities. The letter, as noted, notified Byers that if she chose to become a nonmember and wished to file objections, she could do so either by sending her objections to the Union via certified mail, or by personal delivering the objections to the Union's office.[25] Regarding the first of these two options, e.g., submission by certified mail, the Board in *California Saw*, supra at 236-237, held that requiring a dues objector to submit his/her objections via certified mail was an arbitrary and unnecessary impediment to the exercise of *Beck* rights and, thus, unlawful. The second method described in the letter by which Byers could file objections, e.g., by personally delivering them to the Union's office, was likewise arbitrary and as much of an impediment as the certified mail requirement to Byers' exercise of her *Beck* rights. Byers, as noted, lived some six miles away from the Union office, and the record does not make clear whether there were means of transportation available to her to make personally delivery of any such objections a feasible and practical option.

Second, the Respondent's assertion, that the membership application and dues deduction form which accompanied the November 21, 2001, letter constituted a proper *Beck* notice, is rejected for, as previously discussed and found, that form is misleading and deceptive in that the purported statement of *Beck* rights is concealed on the second and third page of what, on its face, appears to be nothing more than a carbon-copy style formatted Union membership application and dues deduction authorization form. As noted, nothing on the face of the form alerts employees that a statement of their rights is to be found on pages 2 and 3 of the form. As such, employees receiving the form, including Byers, could easily and reasonably be misled into assuming that the second and third pages of the triplicate, carbon-copy style application form were identical to the top white page. Byers, in fact, so testified, credibly in my

[25] The driving distance from Byers' home at 746 Glen Park Rd, Boardman, Ohio and the Union's office at 1223 Teamsters Dr., Youngstown, Ohio is approximately six miles.

view. As further found, the notice itself is deficient in that it does not provide employees with sufficient information to enable them to decide whether or not to object to paying for nonrepresentational fees and dues. Accordingly, by presenting Byers, on November 21, 2001, with a Union membership application and dues deduction form, and soliciting her to join the Union without giving her proper notice of her *General Motors* and *Beck* rights, the Respondent violated Section 8(b)(1)(A) of the Act. *L.D. Kichler Co.*, 335 NLRB 1427, 1429 (2001).[26]

The Respondent, I find, further violated Section 8(b)(1)(A) when it sent Byers the December 5, 2001, letter threatening her with discharge unless she paid the dues amount set forth therein by December 19, 2001, and Section 8(b)(2) when, on December 19, 2001, it asked the Hospital to discharge her for not paying Union dues. When the Respondent sent Byers the December 5, 2001, letter, it had not yet provided her with notice of her right under *General Motors* and *Beck* not to join the Union and to become an objecting nonmember. As noted, neither its earlier November 21, 2001, letter to Byers, nor the membership application form, constituted proper notice to Byers of those rights. The Board, as stated, has held that a union must provide notice of *Beck* rights to an employee when or before it seeks to obligate the employee to pay fees and dues under a union security clause. *California Saw*, supra at 233-234; Monson Trucking, Inc., 324 NLRB 933, 935 (1997). The December 5, 2001, letter clearly does not. Indeed, instead of advising Byers of her *General Motors* and *Beck* rights, the Union in its December 5, 2001, letter does just the opposite and improperly informs Byers that she is required "to become and remain a member in good standing" of the Union. Nor did the Respondent comply with its obligation in this regard before asking the Hospital some two weeks later, on December 19, 2001, to terminate Byers. Having failed at any time prior to December 19, 2001, to properly apprise Byers of her rights, the Respondent could not lawfully request payment from her for dues for the period beginning October 2000, when she first entered the bargaining unit, through December 2001. The Respondent's attempt in its December 5, 2001, letter to do so, along with its threat to have her discharged if she did not make the requested dues payment by December 19, 2001, constituted, as stated above, violations of Section 8(b)(1)(A) of the Act. For the same reason, the Respondent's conduct on December 19, 2001, in requesting the Hospital to discharge Byers for not paying the dues sought in the December 5, 2001, letter violated Section 8(b)(2) of the Act, as alleged.

In so finding, I reject as without merit the Respondent's claim that the allegations should be dismissed, even if Byers was not properly apprised of her *Beck* rights, because Byers was a "recalcitrant" employee or, as known in Board parlance, a "free rider,"[27] who never paid "a dime to the Union" since becoming part of the bargaining unit in September 2000, and to whom the *Beck* notice requirements would, consequently, not apply. See, *Auto Workers Local 95 (Various*

---

[26] The fact that Byers may have subsequently learned of her *Beck* rights through a source other than the Union does not excuse the Respondent's own liability for failing to comply with its own obligation to notify her of her rights before seeking to compel compliance with the union security provisions in the contract. Accordingly, I find no merit to the Respondent's assertion on brief (p. 52) that under violation should be found under *KGW Radio*, supra. As previously discussed, nothing in *KGW Radio* can be read to exempt the Respondent from liability for failing to notify Byers of her *Beck* rights at the time or before it sought her compliance with the union security obligations in the contract.

[27] The term "free rider" has been used by the Board to describe an employee who, while content on receiving the benefits of union representation and with full knowledge of his financial obligations under the terms of a union-security agreement, willfully and deliberately seeks to avoid those obligations. See, *R.H. Macy*, 266 NLRB 858, 859 at fn. 11 (1983), and cases cited therein.

Employers), 337 NLRB 237, 240 (2001).

Byers, as previously discussed, became part of the bargaining unit when she transferred into the Hospital's purchasing department on September 24, 2000. Under Article II, Sec. 2 of the parties' agreement, the Hospital was required to notify the Union of Byers' status as a unit member within 14 days of her entry into the unit. The record does not make clear if the Hospital complied with this 14-day notice requirement in Byers' case, although Bernat, whose overall credibility I question, did claim that the Union was unaware for more than a year that Byers was a bargaining unit employee, implicitly suggesting thereby that the Union first learned of Byers' status as a unit employee just prior to sending her the November 21, 2001, letter. Regardless of whether or not the Hospital ever complied with its obligation to notify the Union of Byers' status, Bernat's testimony makes patently clear, and the Respondent does not contend otherwise, that Byers' union security obligations as a unit employee were never fully explained to her at any time between September 24, 2000, when she became part of the bargaining unit, and November 21, 2001, when she received the Union's first letter purporting to describe her union security obligations. Absent evidence that she knew or had been made aware of her *General Motors* and *Beck* rights prior to November 21, 2001, it cannot be said that Byers willfully and deliberately ignored said obligations at any time prior to that date, as the Respondent on brief suggests. Byers' failure to pay Union dues during the period between September 24, 2000 and November 21, 2001, was, I find, not the result of any recalcitrance on her part but rather the product either of the Hospital's failure to notify the Union of her entry into the bargaining unit and/or the Respondent's failure to notify her of union security obligations.

Nor were Byers' actions following her receipt of the Union's November 21, 2001, letter those of a free-rider. Although Byers apparently paid little attention to the November 21, 2001, letter, on receipt of the December 5, 2001, letter threatening her with discharge, Byers credibly testified that she took immediate steps to discuss the contents of the letter with Union officials by personally visiting and calling the Union's office at the hospital on several occasions. Unable to reach the Union, and having learned soon thereafter from sources other than the Union that she was not obligated to join the Union and could instead become a financial core member and pay a reduced amount in Union dues and fees, Byers, on December 16, 2001, notified the Union, in writing, that she wished to become an "objecting service fee payer," and asked to be provided with the correct amount of dues she would be paying as an objecting nonmember. As an objecting nonmember, Byers was entitled to receive from the Union a statement setting forth the percentage of the reduction in her dues, the basis for the calculation, and the right to challenge said figures. *California Saw*, supra at 233. No such information was provided to Byers prior to the Respondent's December 19, 2001, request to the Hospital that she be terminated. It is patently clear from the record, therefore, that Byers' conduct following her receipt of the Union's December 5, 2001 letter and before the Union demanded her discharge on December 19, 2001, was that of an employee seeking to comply with, not avoid, her union security obligations. Not having been properly or adequately informed by the Union of her union security obligations, Byers confusion, as shown in her December 16, 2001, letter to the Union expressing her desire to become an objecting nonmember, as to whether or not she was required to fill out and return the membership application form was understandable. At no time prior to seeking her discharge on December 19, 2001, did the Union attempt to explain or clarify the doubts expressed by Byers in her December 16, letter. Accordingly, the evidence convinces me that at no time prior to the Union's December 19, 2001 discharge request was Byers willfully or deliberately attempting to avoid paying her fair share of Union dues.

Conclusions of Law

1. The Employer, Humility of Mary Health Partners/St. Elizabeth Health Center, is an

employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent, Chauffeurs, Teamsters, Warehousemen and Helpers Union, Local No. 377, affiliated with the International Brotherhood of Teamsters, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(b)(1)(A) by engaging in the following conduct:

(a) Failing since December 27, 2000, to notify unit employees of their *General Motors* and *Beck* rights at the time it sought to obligate them to pay fees and dues under the union security clause of its collective bargaining agreement with the Employer.

(b) Informing the Charging Parties through its June 6, 2001, letter and the entire bargaining unit through its June 26, 2001, letter that they could not resign their membership in the Union or change their membership to financial core status if they owed back dues.

(c) Failing to acknowledge and recognize Charging Parties Klinger, Presnar, Calabria, Carcelli, Brown, Hallsky, Davis, Rozzo, Kelenits, Richards, Williams, and DeMarco as objecting nonmembers from the time it received their objector letters in April/May 2001 until November 2002, and failing during that period to reduce their financial dues obligation by the proportion of moneys spent on nonrepresentational expenses.

(d) By billing and attempting to collect from bargaining unit employees Union dues for the six-month period preceding the contract's October 22, 1999 execution date, the Respondent violated Section 8(b)(1)(A) of the Act.

(e) Seeking to collect back dues from Charging Party Sandra Byers, and threatening to have her discharged for not paying said dues without ever having informed her of *General Motors* and *Beck* rights.

4. The Respondent also violated Section 8(b)(2) of the Act by attempting to cause the Employer on December 19, 2001, to discharge Sandra Byers for failing to pay dues at a time when it had not informed her of her *General Motors* and *Beck* rights.

5. The unfair labor practices described above are unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(b)(1)(A) and 8(b)(2) of the Act, it shall be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(b)(1)(A) by failing, since December 27, 2000, to notify unit employees of their *General Motors* and *Beck* rights, I find that the appropriate remedy for such a violation is that set forth by the Board in *Rochester Mfg. Co.*, 323 NLRB 260 (1997).[28] Accordingly, the Respondent shall be ordered to process, nunc pro tunc,

[28] In *Rochester*, the Board found that a union violated Section 8(b)(1)(A) by failing to notify all unit employees of their rights under *General Motors* and *Beck*, including current members of the respondent union who had paid union dues without having received notice of their right to

Continued

the objections of any employees who, with reasonable promptness after receiving their notices, elect nonmember status and make *Beck* objections with respect to one or more of the accounting periods covered by the complaint; and to reimburse, with interest, those who object for any dues and fees exacted from them for nonrepresentational activities. Interest on the amount of proportionate back dues and fees owed to objectors shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

To the extent it collected fees and dues from unit employees for the period preceding the contract's October 22, 1999, execution date, the Respondent shall also be required to refund said fees and dues to unit employees, with interest in the manner described in *New Horizons for the Retarded*, supra.

As to Charging Parties Klinger, Presnar, Calabria, Carcelli, Brown, Hallsky, Davis, Rozzo, Kelenits, Richards, Williams, and DeMarco, the Respondent shall be required to notify them, in writing, that it has recognized them as objecting nonmembers,[29] and, to the extent it has not yet done so, reimburse them, with interest as prescribed in *New Horizons for the Retarded*, supra, for all fees and dues exacted from them for nonrepresentational purposes following submission of their objector letters.

The Respondent shall also be required to notify Sandra Byers, in writing, that its request to Humility of Mary Health Partners/St. Elizabeth Health Center for her discharge for nonpayment of dues has been rescinded.[30]

Finally, the Respondent shall be required to rescind its June 26, 2001 letter to all unit employee which unlawfully informed them that they could not resign from the Union or become financial core employees if they owed back dues to the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[31]

ORDER

The Respondent, Chauffeurs, Teamsters, Warehousemen and Helpers Union, Local No. 377, affiliated with the International Brotherhood of Teamsters, Warehousemen and Helpers of

---

become a *Beck* objector. In order to restore the status quo ante as to those individuals, the Board's remedial order included nunc pro tunc relief in the form of opportunities for employees to resign and object retroactively to the six months prior to the filing of the charge in that case, and reimbursement of dues previously collected from those who object.

[29] Although the Respondent, in its August 15, 2001, letter notified the Charging Parties that it was honoring their requests to become financial core members, as previously found, it in fact did not do so until sometime in November 2002, more than a year later. In these circumstances, another written notice to the Charging Parties stating that the Respondent has indeed changed their status to financial core membership, and reduced their fees to cover only its representational activities is fully warranted.

[30] Although the Respondent did rescind its December 19, 2001 request to the Employer to terminate Byers for not paying dues, it never notified Byers of that rescission.

[31] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

America, Youngstown, Ohio, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to inform bargaining unit employees, when it first seeks to obligate them to pay fees and dues under a union-security clause, of their right to be and remain nonmembers, and of the right of nonmembers to object to paying dues and fees for union activities that are not germane to the Respondent's duties as bargaining representative.

(b) Telling unit employees that they are not permitted to resign from the Union or to change their status to financial core member because they are in arrears on their dues.

(c) Refusing to accept, or unreasonably delaying the acceptance, of resignation and/or change of status requests from unit employees because they may have owed back dues, and failing and refusing to acknowledge Carol Klinger, Kim Presnar, Rosalie Calabria, Danielle Carcelli, Gwendolyn Brown, Jo Ann Hallsky, Joyce Davis, Kathleen Rozzo, Catharine Kalenits, Katherine Richards, Carla Williams, and Paula DeMarco as objecting nonmembers of the Union and continuing to exact fees and dues from them for nonrepresentational activities after their objector nonmember status had been perfected.

(d) Collecting fees and dues from unit members for periods preceding the contract's October 22, 1999, execution date.

(e) Threatening to have employee Sandra Byers discharged, and thereafter requesting her employer to discharge her, for failing to pay dues without first having informed her of her *General Motors* and *Beck* rights.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify all unit employees in writing of their right to remain nonmembers, and of the right of nonmembers to object to paying for union activities not germane to the Union's duties as bargaining agent, and to obtain a reduction in fees for such activities. Such notice must include sufficient information to enable employees to intelligently decide whether to object, as well as description of any internal union procedures for filing objections.

(b) Process the objections of nonmember bargaining unit employees, and reimburse, with interest in the manner described in the remedy section of the decision, the objecting nonmembers for any dues and fees exacted from them for nonrepresentational activities for each accounting period since December 27, 2000.

(c) Reimburse unit employees, with interest as described in the remedy section of this decision, for all dues and fees improperly collected from them for periods before the contract's October 22, 1999, execution date.

(c) Notify Carol Klinger, Kim Presnar, Rosalie Calabria, Danielle Carcelli, Gwendolyn Brown, Jo Ann Hallsky, Joyce Davis, Kathleen Rozzo, Catharine Kalenits, Katherine Richards, Carla Williams, and Paula DeMarco, in writing, that it has changed their status to that of financial core member, and, to the extent it has not yet done so, reimburse them, with interest, for all fees and dues exacted from them to pay for the Union's nonrepresentational expenses

from the date in April or May 2001, when they first informed the Union of their objecting nonmember status, to November 2002, when Union changed their status and reduced their fees and dues to cover only its representational expenses.

(d) Notify Sandra Byers, in writing, that its December 19, 2001 request to Humility of Mary Health Partners/St. Elizabeth Health Center for her discharge her for nonpayment of dues has been rescinded.

(e) Rescind its June 26, 2001, letter to all bargaining unit employees which unlawfully informed them that they could not resign or become financial core members if their dues were in arrears.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all dues payment and other records necessary to analyze the amount of reimbursement to be paid nonmember bargaining unit employees who file objections with the Union, and to analyze the amounts of refunds due under the terms of the Order.

(g) Within 14 days after service by the Region, post at its business office in Youngstown, Ohio, copies of the attached notice marked "Appendix."[32] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Furnish signed copies of the notice to the Regional Director for posting by Humility of Mary Health Partners/St. Elizabeth Health Center, if willing, at places on its premises where notices to employees are customarily posted.

(i) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

George Alemán
Administrative Law Judge

[32] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist, any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these concerted activities.,

WE WILL NOT fail to notify unit employees, when we first seek to obligate them to pay dues and fees under a union security clause, of their right to be and remain nonmembers; and of the right of nonmembers to object to paying for our nonrepresentational activities and to obtain a reduction in dues and fees for such activities.

WE WILL NOT refuse to accept or acknowledge the resignations from membership or requests for financial core status of unit employees because they may owe back dues.

WE WILL NOT refuse to acknowledge Carol Klinger, Kim Presnar, Rosalie Calabria, Danielle Carcelli, Gwendolyn Brown, Jo Ann Hallsky, Joyce Davis, Kathleen Rozzo, Catharine Kalenits, Katherine Richards, Carla Williams, and Paula DeMarco as objecting nonmembers, and **WE WILL NOT** continue to charge the above employees or any other nonmember employee for our nonrepresentational activities after they have filed objections.

WE WILL NOT charge unit employees dues and fees for periods preceding the October 22, 1999 execution date of our collective bargaining agreement.

WE WILL NOT attempt to collect dues and fees, threaten, or seek the discharge of, Sandra Byers or any other unit employee without first informing her of her right to be and remain a nonmember of the Union, of her right as a nonmember to object to paying for our nonrepresentational activities, and to obtain a reduction in dues and fees for such activities.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify all bargaining unit employees in writing of their right to be and remain nonmembers and of the rights of nonmembers to object to paying for the Union's nonrepresentational activities and to obtain a reduction in dues and fees for such activities. In addition, the notice will include sufficient information to enable the employees to intelligently decide whether to object, as well as a description of any internal union procedures for filing objections.

WE WILL notify Carol Klinger, Kim Presnar, Rosalie Calabria, Danielle Carcelli, Gwendolyn Brown, Jo Ann Hallsky, Joyce Davis, Kathleen Rozzo, Catharine Kalenits, Katherine Richards, Carla Williams, and Paula DeMarco that their request to become objecting nonmembers has been accepted, and **WE WILL** reimburse them, with interest, for any portion of their dues and fees used to fund our nonrepresentational activities during the period after they requested objecting nonmember status through November 2002.

WE WILL refund to unit employees, with interest, all dues and fees collected from them for any periods preceding the October 22, 1999, execution date of our collective bargaining agreement.

WE WILL notify Sandra Byers, in writing, that our request to Humility of Mary Health Partners/St. Elizabeth Health Center for her discharge for nonpayment of dues has been rescinded.

WE WILL rescind our June 26, 2001, letter to all unit employees which unlawfully informed them that they could not resign or become financial core members if they owed back dues.

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN AND HELPERS UNION, LOCAL NO. 377, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

(Labor Organization)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

1240 East 9th Street, Federal Building, Room 1695, Cleveland, OH 44199-2086

(216) 522-3716, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (216) 522-3723.